

MF 02-9

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	Docket No. 02-ST-0000
v.	)	
	)	
ABC ELEVATOR COMPANY	)	Claim for Credit or Refund
	)	
Taxpayer	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe as a representative of ABC Elevator Company.

Synopsis:

The Department of Revenue (“Department”) issued a letter denying a portion of a claim for a motor fuel tax refund filed by ABC Elevator Company (“taxpayer”). The claim requested a refund of taxes paid on undyed diesel fuel used for off-highway purposes for the period of July 2001 to December 2001. The taxpayer timely protested the Department’s denial of the claim. An evidentiary hearing was held during which the sole issue presented was whether the taxpayer’s equipment is the type of equipment for

which the claim for refund should be allowed. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer filed a claim for a refund of tax paid on undyed diesel fuel for the period of July 2001 to December 2001. (Dept. Ex. #2)

2. The taxpayer's claim included 3205 gallons of undyed diesel fuel that was used in two tractors. (Dept. Ex. #2)

3. On April 10, 2002, the Department issued a letter to the taxpayer that denied the portion of the taxpayer's claim that was based upon the use of the 3205 gallons of fuel in the tractors. A copy of the letter was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

Section 13 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), provides in relevant part as follows:

“Any person other than a distributor or supplier, who loses motor fuel through any cause or uses motor fuel (upon which he has paid the amount required to be collected under Section 2 of this Act) for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid. \*\*\*

For claims based upon taxes paid on or after January 1, 2000, a claim based upon the use of undyed diesel fuel shall not be allowed except \* \* \* for claims for the following: \* \* \* (3) Undyed diesel fuel used by a single unit self-propelled agricultural fertilizer implement, designed for on and off road use, equipped with flotation tires and specially adapted for the application of plant food materials or agricultural chemicals.” (35 ILCS 505/13)

The taxpayer stated at the hearing that the fuel used in its tractors was used in the application of fertilizer. The taxpayer also stated that all of the fuel was used off-road.

In addition, since the portion of the statute that limits claims for undyed diesel fuel became effective on July 1, 2001, the taxpayer claims that it has created an undue hardship on its business. The taxpayer began using dyed fuel in the tractors in 2002.

Although the taxpayer's tractors were used off-highway, the statute now limits claims based upon the use of undyed diesel fuel. The only exception that the taxpayer's use comes closest to is when the fuel is used "by a single unit self-propelled agricultural fertilizer implement, designed for on and off road use, equipped with flotation tires and specially adapted for the application of plant food materials or agricultural chemicals." (35 ILCS 505/13) The normal farm tractor does not fit within this definition, and the taxpayer did not provide evidence that the two tractors fall within this exception. The portion of the taxpayer's claim that is based on undyed fuel used in the two tractors must therefore be denied.

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Linda Olivero  
Administrative Law Judge

Enter: August 30, 2002